

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING
Rules I through IX pertaining to)	ON PROPOSED ADOPTION
awarding grants to carry out the)	
purposes of the Montana Community)	
Health Center Support Act)	

TO: All Interested Persons

1. On January 4, 2008, at 10:30 a.m., a public hearing will be held in Room C207, of the Department of Public Health and Human Services Cogswell Building, 1400 Broadway, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on December 24, 2007. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

RULE I PURPOSE (1) These rules establish a procedure for awarding grants to carry out the purposes of the Montana Community Health Center Support Act.

AUTH: 50-4-804, MCA

IMP: 50-4-804, 50-4-805, MCA

RULE II DEFINITIONS (1) "Advisory group" means the nine member group appointed as provided in 50-4-810, MCA, that recommends to the department the protocols and priorities among goals it considers appropriate for funding.

(2) "Applicant" means the entity applying for the grant. An entity applying for a grant will be expected to apply for federal grants supporting Public Health Service Act (PHSA) (2007) Section 330 grantees when available.

(3) "Bureau of Primary Health Care (BPHC)" means the bureau within the Health Resources and Services Administration (HRSA) of the federal Department of Health and Human Services that oversees the determination of Community Health Center (CHC) status and makes a recommendation regarding federally qualified health center (FQHC) and FQHC look-alike status. A health care center that wants Section 330 grant money of the PHA must apply to the BPHC as provided in 42 CFR

51 (2007), et seq.

(4) "Capital Expenditure Application" means an application for a one-time capital expenditure to an existing federally qualified health center to expand services by increasing medical, dental, or mental health capacity by purchasing equipment or renovating clinic facilities.

(5) "Centers for Medicare and Medicaid Services (CMS)" is the division of the federal Department of Health and Human Services that confers FQHC and FQHC look-alike status and implements FQHC reimbursement policy.

(6) "Community health center (CHC)" means a health care center that meets the requirements of 42 USC 254b and 42 CFR 51, et seq. and is receiving federal Section 330 grant money under the PHSA.

(7) "Comprehensive primary health care services" means the basic, entry-level health care that is generally provided in an outpatient setting, at a minimum providing or arranging for the provision of all of the following:

- (a) diagnosis, treatment, consultation, referral, and other services rendered by a licensed physician or other qualified personnel;
- (b) diagnostic laboratory and radiological services;
- (c) preventive health services, including medical social services, nutritional assessment, and referral, preventive health education, children's eye and ear examinations, well child care (including periodic screening), prenatal and postpartum care, cancer screening, immunization, and voluntary family planning service;
- (d) emergency medical services;
- (e) transportation services as needed for adequate patient care;
- (f) dental services provided by a licensed dentist or other qualified personnel;
- (g) mental health and substance abuse services;
- (h) vision services;
- (i) pharmaceutical services;
- (j) therapeutic radiological services;
- (k) public health services (including nutrition education and social services);
- (l) ambulatory surgical services; and
- (m) services, including the services of outreach workers (including those fluent in languages other than English), which promote and facilitate the optimal use of health services (42 CFR 51c102(h) and 51c102(j)).

(8) "Department" means the Montana Department of Public Health and Human Services.

(9) "Department committee" means employees of the department appointed by the department director to participate in the screening and grant awards determination in this rule.

(10) "Expanded Medical Capacity Application" means an application to expand the medical services offered by existing federally qualified health centers or other facilities that have received federally qualified health center look-alike status.

(11) "Federally qualified health center" means a facility that meets the definition of 42 USC 1396d(l)(2)(B) (2007). A FQHC is entitled to receive enhanced Medicaid and Medicare reimbursement. Community health centers, federally qualified health center look-alikes, and certain tribal and urban Indian entities are FQHCs. Federally qualified health centers are also referred to as federally Qualified community health centers in Montana statute.

(12) "FQHC look-alike" means a FQHC that has been determined by the United States Department of Health and Human Services to meet the requirements to be a Section 330 grantee but has not received Section 330 grants. A FQHC look-alike is entitled to receive enhanced Medicaid and Medicare reimbursement.

(13) "Medically underserved area or population (MUA/MUP)" means an area or population designated by the Secretary of the United States Department of Health and Human Services as having a shortage of primary health services. Designation information may be obtained from the primary care office within the department.

(14) "New Access Points Application" means an application to create and support a health center which will serve a significant portion of a population located in a medically underserved area (MUA), or designated as a medically underserved population (MUP). Successful applicants will be expected to apply for federally qualified health center look-alike status and federal community health center grants at the first available opportunity.

(15) "New Satellite Access Application" means an application by an existing 330 grant funded federally qualified health center to establish a new access point to serve a new patient population that is outside the approved scope of project.

(16) "Public Health Service Act (PHSA)" means the federal Public Health Service Act codified at 42 USC 201, et seq. (2007).

(17) "Section 330 grantee" means a CHC that meets the requirements of 42 USC 254b and 254c (2007) and has been awarded federal grant money under the PHSA.

(18) "Service Expansion Application" means an application to expand the medical, mental health, or dental services offered by existing federally qualified health centers or other facilities that have received federally qualified health center look-alike status.

AUTH: 50-4-804, MCA

IMP: 50-4-801, MCA

RULE III PROTOCOLS AND PRIORITIES AMONG GOALS (1) The advisory group appointed pursuant to 50-4-810, MCA, shall advise the department committee, in writing, of its recommendations for the protocols and priorities related to awarding state grant(s) from among the following goals:

(a) create and support new access points for comprehensive primary health care services by applicants that will be working toward FQHC status;

(b) create and support new access satellites in new locations for comprehensive primary health care services by existing CHCs in new locations;

(c) expand the medical capacity of existing FQHCs that are Section 330 grantees;

(d) expand the medical, mental health, or dental services offered by existing FQHCs that are Section 330 grantees; or

(e) award one time grants for FQHCs to purchase equipment or renovate clinic facilities.

(2) Final decision of the protocols and priorities will be made by the department committee. If the department committee does not follow the recommendations of the advisory group, it must comply with the requirements of 50-

4-811, MCA.

AUTH: 50-4-804, MCA

IMP: 50-4-805, MCA

RULE IV ELIGIBILITY FOR GRANT (1) To be eligible for consideration for a state grant an applicant must submit a proposal and meet the requirements listed in (1)(a) through (f) and (2). The applicant for:

(a) "capital expenditure" must be to an existing FQHC. Capital expenditure grants are for the purchase of equipment or renovation of clinic facilities. Capital expenditure applications must demonstrate that additional services will be made available and/or increase patient capacity per department guidelines for capital expenditure applications;

(b) "expanded medical capacity" must be able to meet the qualifications contained in the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006;

(c) "new access points" must be able to meet the qualifications for new access points described in the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007;

(d) "new satellite access sites" must be able to meet the qualifications for new access points described in the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007;

(e) "service expansion" must be able to meet the qualifications for service expansion grants contained in the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; and

(f) "state grants" must also apply for FQHC look-alike status and/or 330 grants, where applicable.

(2) The applicant for new access points and new satellite access sites must be able to meet all the requirements of 42 CFR 51 (2007), et seq. and provide evidence that the following requirements of 42 CFR 51 will be met:

(a) The applicant will have a governing board with at least nine but not more than 25 members, a majority of whom are individuals served or will be served by the health center and are representative of the health center's patient demographics. No more than one-half of the remaining members of the governing board may be individuals who derive more than ten percent of their annual income from the health care industry. The remaining members of the governing board shall be representative of the area which the center serves.

(b) The applicant will have a sliding schedule of fees that is linked to the patient's ability to pay for patients with incomes up to 200% of the federal poverty level.

(c) The applicant will be serving a significant portion of a population located in a medically underserved area (MUA) or designated as a medically underserved population (MUP).

(d) The applicant will serve all patients without discrimination.

(3) The applicant for service expansion, expanded medical capacity, or capital expenditure must meet the requirements of 42 CFR 51 (2007), et seq. and provide evidence that the following requirements of 42 CFR 51 have been met:

(a) The applicant must have or intend to have a governing board with at least nine but not more than 25 members, a majority of whom are individuals served or will be served by the health center and are representative of the health center's patient demographics. No more than one-half of the remaining members of the governing board may be individuals who derive more than ten percent of their annual income from the health care industry. The remaining members of the governing board shall be representative of the area which the center serves.

(b) The applicant must have a sliding schedule of fees that is linked to the patient's ability to pay for patients with incomes up to 200% of the federal poverty level.

(c) The applicant must be serving a significant portion of a population located in a medically underserved area (MUA) or designated as a medically underserved population (MUP).

(d) The applicant must serve all patients without discrimination.

AUTH: 50-4-804, MCA

IMP: 50-4-802, 50-4-805, MCA

RULE V REQUESTS FOR PROPOSALS FOR MONTANA COMMUNITY HEALTH CENTER SUPPORT ACT GRANTS

(1) The department will solicit proposals and award grants whenever funding is appropriated by the Legislature. The Department of Administration's request for proposals (RFP) process will be utilized to solicit applications based on the priority among projects determined pursuant to [RULE III]. The opportunity to make a proposal for a grant will also be posted on the department's web site. The RFP will include the application selection criteria established pursuant to [RULE VI].

(2) The applicant's proposal will consist of a brief statement of the amount of the funds requested and how the applicant proposes to use such funds. The proposal must disclose if it is for capital expenditure, expanded medical capacity, new access points, new satellite access, or service expansion. The applicant should also include a description of need, impact on access, projected number of additional patients served and encounters, timelines for providing services and applying for federal grant and/or look-alike status.

(3) In addition a new access point or new satellite access application must include:

(a) its most recent application to the Secretary of HHS for a grant under Section 330 of the Public Health Service Act, if such grant application has been or will be submitted;

(b) its most recent application to the Secretary of HHS requesting designation as a federally qualified health center "look-alike" if such application has been or will be submitted;

(c) its service expansion application which it has submitted or will submit to the Secretary of HHS;

(d) its expanded medical capacity application which it has submitted or will submit to the Secretary of HHS; and

(e) its capital expenditure application which it will submit to the department. The applicant should refer to the United States Department of Health and Human

Services, HRSA-08-077 dated September 28, 2007; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006; or department guidelines for capital expenditure applications; whichever is most appropriate for additional requirements.

AUTH: 50-4-804, MCA

IMP: 50-4-802, 50-4-805, 50-4-806, MCA

RULE VI CRITERIA FOR AWARDING GRANTS (1) Proposals will be evaluated by the department committee using criteria developed by the advisory group and the criteria by category of application as located at the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006, or department guidelines for capital expenditure applications.

(2) In addition to the criteria listed above, the advisory group may develop additional criteria related specifically to Montana and its unique circumstances. Additional criteria to be considered may include, but is not limited to: high need areas; impact; federal funding opportunities, readiness, collaborations, and cost per client served. Any criterion used in addition to the criteria in the previous paragraph shall be listed in the request for proposal.

(3) The advisory group may elect to develop weighting criteria related specifically to Montana and its unique circumstances. Weighting criteria does not have to conform to the weights assigned in the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006; or department guidelines for capital expenditure applications. The advisory group will determine state-specific scoring methodology for the criteria identified above, and also identify any preferences.

(4) If the department committee does not follow the recommendations of the advisory group, it must comply with the requirements of 50-4-811, MCA.

AUTH: 50-4-804, MCA

IMP: 50-4-802, 50-4-805, 50-4-806, MCA

RULE VII INITIAL SCREENING OF PROPOSALS (1) The department committee will conduct an initial screening of the proposals to determine if the applicants have complied with the requirements set forth in the request for proposal. The department committee may allow an applicant to correct omissions or errors in its proposal that are not material. When exercising this option, the department committee shall notify all other applicants of the corrections made.

AUTH: 50-4-804, MCA
IMP: 50-4-805, 50-4-806, MCA

RULE VIII. REVIEW OF PROPOSALS BY DEPARTMENT COMMITTEE

(1) An objective grant review process will be performed by the department committee consistent with the criteria stated in [RULE VI].

AUTH: 50-4-804, MCA
IMP: 50-4-805, 50-4-806, MCA

RULE IX. AWARD AND ADMINISTRATION OF GRANT

(1) Final grant awards determination will be made by the department committee. The department committee shall advise the advisory group, in writing, of its determination of grant awards to applicant(s). If the department committee does not follow the recommendation(s) of the advisory group, it must comply with the requirements of 50-4-811, MCA.

(2) Applicants that are to be awarded grants by the department will negotiate a contract with the department. Grant amounts will be awarded prior to the end of the state fiscal year.

(3) The contract will be administered by the Hospital and Clinic Services Bureau, Health Resources Division of the department.

(4) The contract may be terminated for nonperformance or underperformance on the part of the applicant. The department committee may make a determination of nonperformance or underperformance based on the applicants' demonstrated work toward accomplishing the objectives of their request for proposal. The applicant will be notified by the department committee of their determination of nonperformance or underperformance. The applicant will be afforded an opportunity to remedy the nonperformance or underperformance. The department committee may make a determination of continuing nonperformance or underperformance based on the applicants' demonstrated work toward accomplishing the objectives of their request for proposal. The applicant will have the right to request a hearing if aggrieved by the determination of continuing nonperformance or underperformance of the department committee. Hearing rights under this rule will be detailed in the department committee's determination of continuing nonperformance or underperformance.

(5) Grant awards will not supplant already available funds and in-kind resources.

(6) Grant award monies will cease once federal monies are received by the applicant for the same purpose as this grant award.

(7) In the event of (4) or facility closure, the department reserves the right to recoup unused capital grants and/or assets purchased with the monies derived from this grant award.

(8) Benchmarks and other reporting tools may be used by the department to determine performance on the part of applicants that obtain grant awards.

(9) Grant awards amounts may be expended over a time period not to exceed one year beyond the end of the biennium the grant was awarded if the

project requires it and if legislative funding permits it. After that time period has elapsed, an application must be submitted for continuation of state funding based upon compliance with grant requirements and meeting performance measures.

AUTH: 50-4-804, MCA

IMP: 50-4-802, 50-4-805, 50-4-806, MCA

4. The Department of Public Health and Human Services is proposing the adoption of New Rules I through IX to establish a grant program for community health centers. These rules are necessary to implement House Bill 406 of the 2007 Montana Legislature which establishes the Montana Community Health Center Support Act and is codified at 50-4-801 through 50-4-815, MCA.

The Montana Community Health Center Support Act was passed to assist in addressing the health care needs of Montanans. Approximately one-fifth of Montana's population has no public or private health insurance. Many Montanans who are uninsured or underinsured experience difficulty in accessing medical and dental services. Uninsured and underinsured people are more likely than those with adequate insurance to be hospitalized for conditions that could have been avoided, to be diagnosed with acute conditions resulting in higher rates of disability and death, or to postpone recommended tests or treatment.

These rules implement the legislative mandate to enhance access to primary care and preventative care for Montana residents by strengthening and supporting Montana's community health centers. This will be done by creating a grant process; to create and support new nonfederally funded community health centers until federal funds are granted; to expand the medical, mental health, or dental services offered by existing federally qualified health centers or other facilities that have received federally qualified health center look-alike status; and to provide one-time grants for capital expenditures to existing federally qualified health centers and facilities with federally qualified health center look-alike status. \$650,000 is available for grants under the Montana Community Health Center Support Act for state fiscal years 2008 and 2009.

These new rules further define the relationship between the department and the advisory group in the awarding of grants under the Montana Community Health Center Support Act.

RULE I

New Rule I establishes the purpose of these new rules which is to implement the Montana Community Health Center Support Act.

RULE II

New Rule II defines the terms that will be used within these rules.

RULE III

New Rule III details the process for the advisory group to make recommendations to the department for setting protocols and priorities among goals for awarding grants under the Montana Community Health Center Support Act.

RULE IV

New Rule IV defines the requirements for prospective applicants to apply for Montana Community Health Center Support Act grants.

RULE V

New Rule V states the Request for Proposal process the department will use to award grants.

RULE VI

New Rule VI establishes that to award Montana Community Health Center Support Act grants the department will use criteria and weights established by the federal government and the state advisory group.

RULE VII

New Rule VII details the initial screening process the department will follow for grant applications.

RULE VIII

New Rule VIII establishes that an objective grant review process will be used to award grants.

RULE IX

New Rule IX describes the process for awarding and administering grants by the department and that the department will notify the advisory group of final grant awards and explain any variance from the advisory group's recommendation.

Cumulative fiscal impact and number of persons affected. There are presently 15 FQHCs providing services for Montanans. In addition there are numerous satellites. Combined they receive \$4.8 million in Medicaid reimbursement annually. The fiscal impact of grants under the Montana Community Health Center Support Act is \$650,000 for state fiscal years 2008 and 2009.

5. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210,

Helena MT 59604-4210, no later than 5:00 p.m. on January 14, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by letter dated November 15, 2007, sent postage prepaid via USPS.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ Geralyn Driscoll
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State November 26, 2007.